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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLTON SANDERS,

Defendant and Appellant.

B216957

(Los Angeles County
Super. Ct. No. BA295020)

APPEAL from an order of the Superior Court of Los Angeles County.

Craig E. Veals, Judge. Affirmed.

Linda Acaldo, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Charlton Sanders appeals from an order denying his postjudgment motion to correct or modify his sentence, by awarding additional presentence custody credits.

We appointed counsel to represent appellant. Counsel filed a brief raising no issues. (*People v. Wende* (1979) 25 Cal.3d 436, 441-442.) On November 3, 2009, we advised appellant that he had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or argument he wished this court to consider. On December 2, 2009, appellant requested an extension of time to file a brief. The following day, we granted an extension to December 29, 2009. A copy of that order was mailed to appellant at his last known address, in state prison, and was returned marked, "Return to Sender [¶] Inmate Paroled Unable to Forward." To date we have received no further communications from appellant.

The record on appeal reflects that on May 8, 2006, appellant pled no contest to possessing cocaine base for sale (Health & Saf. Code, § 11351.5). Pursuant to a negotiated disposition, the court dismissed two prior "strike" allegations, and sentenced appellant to five years in prison, with execution suspended. Appellant was placed on formal probation for five years, on condition he serve 365 days in county jail, servable at a drug treatment program. Appellant received 213 days presentence custody credit (142 actual and 71 conduct).

On January 30, 2007, appellant admitted having violated probation. The court revoked and reinstated probation, again directing that appellant spend 365 days in jail, to be served at a specified drug program. The minute order recites that appellant "waive[d] custody credits for this disposition only."

On or about October 11, 2007, appellant's probation was summarily revoked, and he was remanded to custody. On December 19, 2007, appellant was found to have violated probation, and his original sentence was ordered into effect. The court (another judge) awarded appellant custody credit of 490 days, consisting of "365 days previously served plus 125 days-83 days actual plus 42 good/work time."

On or about October 20, 2008, appellant filed his “petition for modification of sentence, abstract of judgment and or correction of sentence pursuant to Penal Code sections 1170, 2900.5, 4019.” Appellant asserted that the court (the original sentencing judge) had previously reduced his five-year sentence to four years; that he was entitled to 1,500 days presentence custody credit, constituting more time than four-years; and that he was therefore entitled to release, with no term of parole, by reason of certain language in Penal Code section 1170 that was repealed in 1998 (Pen. Code, former § 1170, subd. (a)(3), amended by Stats. 1998, ch. 338, § 2, p. 2714).

On May 15, 2009, the court (the original judge) denied appellant’s motion. The court opined that appellant was entitled to credit only for time in custody after his January 30, 2007 waiver of prior credits, and that the 490 days credit he had received on December 19, 2007 exceeded that entitlement. Appellant filed his notice of appeal on June 4, 2009.

We have examined the entire record, and are satisfied that appellant’s appellate counsel has fully complied with her responsibilities and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 279-280; *People v. Wende*, *supra*, 25 Cal.3d at pp. 441, 443.)

The order denying appellant’s motion to modify or correct sentence is affirmed.

LICHTMAN, J.*

We concur:

BIGELOW, P. J.

FLIER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.